

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: January 17, 2007
Decided: January 22, 2007

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Re: *Dolphin Ltd. P'ship I, L.P. v. Gupta, et al.*
Civil Action No. 2486-N
Cardinal Value Equity Partners, LP v. Gupta, et al.
Civil Action No. 1956-N

Dear Counsel:

Having considered the briefs submitted by all parties, I am granting the defendants' Motion to Consolidate. The Court may order consolidation when separate actions present common questions of fact or law,¹ and neither party disputes that such questions are present here. Consolidation represents the most efficient method of proceeding in this matter.

Common questions of fact and law pervade both actions. Both complaints allege that defendants have used corporate assets and decision-making power to

¹ Ct. Ch. R. 42(a).

further the interests of various directors, principally Vinod Gupta. Both complaints rely upon similar allegations to suggest that plaintiffs need not seek demand from the board. Whether these allegations are sufficient to meet the pleading requirements of Court of Chancery Rule 23.1 will require substantially the same analysis during a motion to dismiss. If these cases proceed to trial, the Court will have to make largely similar determinations of fact concerning such issues as the credibility of the Raval report, the value of office space and other perquisites allegedly provided to various directors, and the appropriateness of alleged related party transactions.

However this matter is ultimately decided, all parties (and infoUSA shareholders in general) are best served by the most expeditious conclusion of litigation consistent with justice. The cost of litigating two separate derivative actions will ultimately be borne by shareholders of the company, both in payment of legal fees and the distraction of company management. The action should be consolidated unless plaintiffs demonstrate some prejudice that would result.

No such showing has been made here. To the extent that plaintiffs have sued different defendants, a consolidated complaint may specifically set forth the targeted directors by each count. Although plaintiffs present different legal theories to justify relief, these theories largely rely upon the same set of allegations, particularly concerning the propriety of related-party transactions. It would waste the resources of litigants and the Court to consider these allegations multiple times.

Consolidating the entire action, rather than simply ordering a joint hearing of defendants' motions to dismiss, also eliminates the possibility of a peculiar injustice. The Court considers only allegations put forth in the complaints, not subsequent briefs, when it evaluates a motion to dismiss.² Plaintiffs may only rely upon their own allegations, and at present these allegations differ slightly between complaints. A joint hearing thus presents the strange prospect of the Court being forced to dismiss both complaints under Rule 12(b)(6) or Rule 23.1, even though the allegations before me, taken as a whole, would survive a motion to dismiss.

For these reasons, defendants' Motion to Consolidate is granted. Ms. McGeever and Mr. McNew are hereby appointed co-lead counsel for plaintiffs. Given the time and resources already expended in this matter, I do not believe that the mechanics of consolidation require considerable delay. Counsel for plaintiffs

² *Orman v. Cullman*, 794 A.2d 5, 28 n.59 (Del. Ch. 2002).

shall submit a consolidated complaint no later than February 5, 2007. Counsel for all parties shall confer upon a form of order implementing this decision. Plaintiffs and defendants shall confer and provide the Court with a stipulated schedule regarding briefing on defendants' subsequent motion to dismiss, if any.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line at the end.

William B. Chandler III

WBCIII:aar